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SUPREME COURT OF THE UNITED STATES

COMMISSIONER OF INTERNAL REVENUE

86–1053 v.

ASPHALT PRODUCTS CO., INC.

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86–1054 v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Nos. 86–1053 AND 86–1054. Decided June 1, 1987

JUSTICE BLACKMUN, concurring in part and dissenting in part.

I agree with the Court in its denial of the petition for certiorari in No. 86–1054. I dissent from its summary reversal of the judgment of the Sixth Circuit on the negligence penalty issue. I do not agree that the correct result is so obvious and the Court of Appeals so clearly in error that summary reversal is warranted. I hope the Court's action is not due to an innate reluctance to review a federal income tax case. After all, United States Courts of Appeals have reached conflicting conclusions on the issue, and income tax law often has its special vagaries. I would grant certiorari in No. 86–1053 and give that case plenary consideration.